

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jayvee Rhoda	Team: Squad #8	CCRB Case #: 201506124	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/09/2015 9:30 PM	Location of Incident: § 87(2)(b)	Precinct: 108	18 Mo. SOL 1/9/2017	EO SOL 1/9/2017	
Date/Time CV Reported Thu, 07/09/2015 10:27 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/24/2015 10:55 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Peter Talavera	09524	946660	108 PCT
2. SGT Daniel Marussich	4599	938954	108 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Peter Talavera	Discourtesy: PO Peter Talavera spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.SGT Daniel Marussich	Abuse: Sgt. Daniel Marussich frisked § 87(2)(b)	§ 87(2)(b)
C.POM Peter Talavera	Abuse: PO Peter Talavera searched the car in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.POM Peter Talavera	Abuse: PO Peter Talavera refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
E.SGT Daniel Marussich	Abuse: Sgt. Daniel Marussich refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)

Case Summary

On July 9, 2015, at approximately 9:30 p.m., § 87(2)(b) was driving to his father's house, in the vicinity of § 87(2)(b) in Queens. As § 87(2)(b) was searching for a parking space, his friend § 87(2)(b) called § 87(2)(b) and said that he saw § 87(2)(b)'s car pass by. § 87(2)(b) picked § 87(2)(b) up in front of a bodega and they had a friendly conversation in the car while § 87(2)(b) continued searching for parking. § 87(2)(b) then dropped § 87(2)(b) off and continued driving. Shortly afterwards, § 87(2)(b) was pulled over by PO Peter Talavera and Sgt. Daniel Marussich from the 108th Precinct, who were in an unmarked RMP. PO Talavera approached § 87(2)(b) on the driver's side and asked him what he was doing. § 87(2)(b) explained that he was looking for parking. PO Talavera allegedly said, "Don't give me that bullshit, we saw you pass something to that guy." (**Allegation A**) During the course of the incident, PO Talavera also allegedly said, "Oh, so you're a fucking wiseass now?"; "What do you mean, why I fucking pulled you over?"; "We saw you give that guy some shit"; "Oh, so you're a fucking wiseass again?"; "Get out of the fucking car"; "Shut the fuck up"; and, "Listen, I don't give a shit, we could stay here all night." PO Talavera asked § 87(2)(b) to exit his vehicle and walk to the back; § 87(2)(b) complied. Sgt. Marussich, who was standing at the back of the vehicle, patted his hands over § 87(2)(b)'s pants pockets, pants leg, arms, and armpit area (**Allegation B**). PO Talavera then searched § 87(2)(b)'s vehicle by allegedly entering the vehicle through the driver's side, front passenger's side, and rear passenger's side doors and opening internal compartments, including the glove box, cup holder, and seat pockets (**Allegation C**). § 87(2)(b) asked both PO Talavera and Sgt. Marussich for their shield numbers, but they both allegedly refused to provide it (**Allegations D and E**). PO Talavera and Sgt. Marussich returned to their vehicle and left the scene without summoning or arresting § 87(2)(b). No video was available for this incident.

Mediation, Civil, and Criminal Histories

§ 87(2)(b) refused mediation. On October 15, 2015, a FOIL request was sent to the New York City Comptroller's Office and the status of a Notice of Claim for § 87(2)(b) is pending. § 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

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§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer Histories

- § 87(2)(b) has filed four previous CCRB complaints. § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

- PO Talavera has been a member of the service for seven years and there are no substantiated CCRB allegations against him. § 87(2)(g)
- Sgt. Marussich has been a member of the service for 10 years and there are no substantiated CCRB allegations against him. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

PO Talavera and Sgt. Marussich acknowledged interacting with § 87(2)(b)

Allegations Not Pleaded

§ 87(2)(g)

Recommendations

Allegation A- Discourtesy: PO Peter Talavera spoke discourteously to § 87(2)(b)

Allegation D- Abuse of Authority: PO Peter Talavera refused to provide his shield number to § 87(2)(b)

Allegation E- Abuse of Authority: Sgt. Daniel Marussich refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) stated that when he was pulled over by PO Talavera and Sgt. Marussich, PO Talavera approached him on the driver's side and Sgt. Marussich approached him from the right passenger side of his vehicle. PO Talavera asked § 87(2)(b) for his license and registration, which § 87(2)(b) retrieved from his glove box and provided to PO Talavera. PO Talavera asked § 87(2)(b) why he was driving around the block multiple times and § 87(2)(b) replied that he was looking for parking. PO Talavera replied by saying, "Don't give me that bullshit, we saw you pass something to that guy." § 87(2)(b) asked PO Talavera why he was pulled over and PO Talavera replied, "Oh, so you're a fucking wiseass now?" and, "What do you mean, why I fucking pulled you over?" PO Talavera told § 87(2)(b) that he knew why the officers pulled him over. PO Talavera said, "We saw you give that guy some shit," to § 87(2)(b). § 87(2)(b) was not sure what PO Talavera was referring to, but he believes that PO Talavera meant drugs. § 87(2)(b) asked, "What shit?" PO Talavera replied, "Oh, so you're a fucking wiseass again?" PO Talavera then ordered § 87(2)(b) to exit his vehicle, saying, "Get out of the fucking car." § 87(2)(b) complied and exited his vehicle and walked to the rear. § 87(2)(b) stated that he stood at the rear of his vehicle while PO Talavera searched the vehicle. § 87(2)(b) asked PO Talavera why he was searching the vehicle and PO Talavera replied, "Shut the fuck up." § 87(2)(b) made another remark to PO Talavera, but he did not recall what he said. PO Talavera replied saying, "Listen, I don't give a shit, we could stay here all night." § 87(2)(b) asked PO Talavera for his shield number multiple times, but PO Talavera refused to provide it. PO Talavera returned § 87(2)(b)'s paperwork to him. As PO Talavera and Sgt. Marussich were leaving the scene, § 87(2)(b) asked both of them for their shield numbers. Sgt. Marussich yelled out a number, but § 87(2)(b) only heard the last two numbers: 44. PO Talavera ignored § 87(2)(b) and returned to his RMP. § 87(2)(b) looked at the license plate number of the officers' RMP before he left and provided it to

IAB when he made the initial complaint. § 87(2)(b) was not summonsed or arrested (See Board Review 3).

PO Talavera confirmed that he approached § 87(2)(b) on the driver's side and Sgt. Marussich approached on the passenger's side. PO Talavera stated that when he reached § 87(2)(b) § 87(2)(b) immediately said, "You guys have nothing fucking better to do?" to PO Talavera. § 87(2)(b) was being irate and disrespectful towards PO Talavera. PO Talavera asked § 87(2)(b) for his license and registration and § 87(2)(b) provided them. PO Talavera informed § 87(2)(b) that he was observed driving past a stop sign without stopping, having excessive window tints, and driving without a seatbelt. PO Talavera asked § 87(2)(b) to exit his vehicle and walk to the back and § 87(2)(b) complied. PO Talavera denied saying any of the alleged discourteous remarks towards § 87(2)(b). PO Talavera stated that he did not use any profanity towards § 87(2)(b) and nor did Sgt. Marussich. PO Talavera stated that § 87(2)(b) repeatedly asked him and Sgt. Marussich for their shield numbers. PO Talavera stated that his shield was on his chest in full display. PO Talavera also verbally stated both his name and shield number for § 87(2)(b) multiple times. PO Talavera noted in his memo book that § 87(2)(b) repeatedly asked him and Sgt. Marussich for their names and shield numbers, while their shields were fully displayed, and PO Talavera repeatedly identified himself. PO Talavera stated that he never refused to provide his shield number to § 87(2)(b). PO Talavera stated that Sgt. Marussich also verbally provided his shield number to § 87(2)(b) upon request. § 87(2)(b) told PO Talavera that he was looking for parking. However, when § 87(2)(b) was released, he left the scene and discontinued looking for parking (See Board Review 4).

Sgt. Marussich confirmed that he stood at the right passenger side of § 87(2)(b)'s vehicle while PO Talavera spoke with § 87(2)(b) on the driver's side. Sgt. Marussich stated that PO Talavera asked § 87(2)(b) for his paperwork, but § 87(2)(b) was being combative and non-compliant with PO Talavera. § 87(2)(b) asked PO Talavera why the officers stopped his car and told PO Talavera that he was stopped for no reason. § 87(2)(b) was continuously arguing with PO Talavera before eventually providing his paperwork. When PO Talavera asked § 87(2)(b) why he was circling around the block so many times, § 87(2)(b) explained that he was looking for parking. However, Sgt. Marussich stated that he observed § 87(2)(b) pass by multiple open parking spaces before they stopped § 87(2)(b)'s car. Sgt. Marussich stated that there were no issues with ordering § 87(2)(b) out of his vehicle. Sgt. Marussich stated that PO Talavera did not say any of the alleged discourteous remarks towards § 87(2)(b) and he did not say the remarks himself. Sgt. Marussich stated that neither he nor PO Talavera used any profanity towards § 87(2)(b). Sgt. Marussich stated that § 87(2)(b) asked him for his shield number and he provided it. § 87(2)(b) seemed satisfied with Sgt. Marussich's response. Sgt. Marussich did not hear § 87(2)(b) ask PO Talavera for his name or shield number. § 87(2)(b) was warned and admonished about his tinted windows before he was released (See Board Review 5).

§ 87(2)(g)

_____,

[illegible]

Allegation B- Abuse of Authority: Sgt. Daniel Marussich frisked § 87(2)(b)

Allegation C- Abuse of Authority: PO Peter Talavera searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated he was driving around the block several times in the vicinity of the incident location because he was visiting his father's house and looking for parking. § 87(2)(b) stated that it was raining during the incident. While § 87(2)(b) was driving around, his friend § 87(2)(b) called him, stating that he saw § 87(2)(b)'s car drive by. § 87(2)(b) picked up § 87(2)(b) and continued driving around the block looking for parking. § 87(2)(b) eventually dropped § 87(2)(b) off in front of a bodega. § 87(2)(b) stated that he only had a conversation with § 87(2)(b) in his car and they did not exchange any objects with each other or shake hands. § 87(2)(b) stated that his hands were on his steering wheel the whole time because he was driving and he was not making any movements with his hands.

Shortly after § 87(2)(b) dropped § 87(2)(b) off, he was pulled over by PO Talavera and Sgt. Marussich. PO Talavera ordered § 87(2)(b) to exit his vehicle and walk to the back. § 87(2)(b) complied and exited his vehicle on his own. § 87(2)(b) walked to the back of his vehicle, where Sgt. Marussich was waiting for him. Sgt. Marussich ordered § 87(2)(b) to place his hands on the trunk of his car and § 87(2)(b) complied. § 87(2)(b) stated that Sgt. Marussich patted his hands over § 87(2)(b)'s front and back pants pockets, pants leg, arms, and armpit areas. It took Sgt. Marussich approximately 20 seconds to perform this frisk. No objects were recovered during the frisk and § 87(2)(b) was not handcuffed.

§ 87(2)(b) stated that PO Talavera proceeded to search his vehicle while § 87(2)(b) stood in the back. § 87(2)(b) stated that he was facing away from his vehicle and he saw the search by looking over his shoulder. § 87(2)(b) stated that PO Talavera entered his vehicle through the driver's side door and opened the glove compartment, sifting through the contents with his hands. PO Talavera then walked around to the front passenger's side and entered the vehicle through the front passenger side door and opened the glove compartment again. PO Talavera then walked back to the driver's side and entered the vehicle through the driver's side door and opened the cup holder and glove compartment. § 87(2)(b) stated that PO Talavera opened the left passenger side door and looked inside the seat pockets and under the back seats of the vehicle with his flashlight. PO Talavera did not reach under the seats with his hands. PO Talavera searched the vehicle for

approximately 10-20 minutes. § 87(2)(b) stated that after the vehicle search, PO Talavera returned his paperwork and the officers left the scene.

§ 87(2)(b) stated that he went home and did not visit his father because it was already late and he was unable to find parking. § 87(2)(b) spoke with § 87(2)(b) after the incident and § 87(2)(b) told § 87(2)(b) that he placed his cell phone in his pocket after he exited § 87(2)(b)'s vehicle, since it was raining outside. § 87(2)(b) believes that he was stopped because the officers saw § 87(2)(b) do this. § 87(2)(b) refused to allow the investigation to contact § 87(2)(b). Without additional information, database searches could not be performed to locate contact information for § 87(2)(b). (See Board Review 3).

PO Talavera stated that he was driving his RMP with Sgt. Marussich when he observed § 87(2)(b) pull over in his vehicle near a bodega that is a known drug stash-house. PO Talavera was familiar with the bodega because he has previously made drug arrests at the bodega. PO Talavera stated that local drug dealers stash drugs in the aisles of the store for buyers to pick up. PO Talavera stated that as § 87(2)(b) was pulled over, an unknown male exited the bodega and entered § 87(2)(b)'s vehicle through the front passenger's side. The male turned on the vehicle's dome light and began leaning his body forward, reaching underneath the passenger seat with both hands and making pulling motions. PO Talavera became concerned by the passenger's reaching motions because they were in a drug-prone area and § 87(2)(b) and the passenger may have had weapons to protect themselves during a drug transaction. § 87(2)(b) and his passenger began driving in circles around the block, at least four to five times. § 87(2)(b)'s passenger was repeatedly making reaching movements under his seat while § 87(2)(b) was driving. § 87(2)(b) then dropped his passenger off in front of the same bodega where he was picked up. The passenger exited the vehicle and gave § 87(2)(b) a high-five before going back inside the bodega. PO Talavera believed that § 87(2)(b) might have given something to his passenger before the passenger left.

§ 87(2)(b) continued driving and PO Talavera continued following him. PO Talavera then observed § 87(2)(b) drive past a stop sign without stopping. § 87(2)(b) then made a left turn and PO Talavera saw the buckle of § 87(2)(b)'s seatbelt shining. PO Talavera proceeded to execute a car stop of § 87(2)(b)'s vehicle. PO Talavera ordered § 87(2)(b) to pull down all of his car windows and § 87(2)(b) complied. PO Talavera asked § 87(2)(b) to step out of his vehicle and § 87(2)(b) complied. § 87(2)(b) walked to the back of his vehicle and sat on the rear bumper. Sgt. Marussich stood at the back to watch over § 87(2)(b). PO Talavera asked § 87(2)(b) for permission to search the vehicle and § 87(2)(b) said "that's fine" and told PO Talavera that he could search "wherever you want." PO Talavera stated that he inserted his head through the open windows of the driver's side and rear and front passenger's side in order to perform a plain view search with his flashlight. PO Talavera was looking at the door jamb, floor panel, and center console to see if there were any drugs or weapons in the vehicle. PO Talavera stated that the vehicle doors were closed when he inserted his head through the window areas and he did not open any of the vehicle doors. PO Talavera stated that he did not open any compartments or place his hands inside any seat pockets or reach under any seats. PO Talavera stated that he was only looking at what was in plain view. PO Talavera did not find anything illegal in § 87(2)(b)'s vehicle.

PO Talavera stated that he did not witness Sgt. Marussich perform a frisk of § 87(2)(b) PO Talavera stated that he was focused on the vehicle search while § 87(2)(b) and Sgt. Marussich were standing in the back. PO Talavera did not have any physical contact with § 87(2)(b) except for when he returned § 87(2)(b)'s paperwork. PO Talavera stated that he warned § 87(2)(b) about his excessive window tints and decided to let him go without a summons, since issuing summonses was not his primary duty as an anti-crime officer.

When PO Talavera and Sgt. Marussich returned to their RMP, Sgt. Marussich informed PO Talavera that the person that they had just stopped was § 87(2)(b) a criminal recidivist who is known to carry firearms. PO Talavera looked § 87(2)(b) up on his RMP's mobile digital terminal and the results displayed numerous arrests for robbery, burglary, assault, and drug and firearms possession. The search results also indicated that § 87(2)(b) is known to carry a firearm (See Board Review 4).

Sgt. Marussich stated that the area where § 87(2)(b) was pulled over is a drug-prone location and there was a known robbery pattern in that particular area at the time of the incident. The field intelligence officer from Sgt. Marussich's command has confirmed that the area is drug-prone. Sgt. Marussich observed § 87(2)(b) in his vehicle, which had darkly-tinted windows. Sgt. Marussich stated that he and PO Talavera were about to pull § 87(2)(b) over for his tinted windows, but § 87(2)(b) began driving in circles. The officers decided to follow § 87(2)(b) to see whether he was engaging in any illicit activity. § 87(2)(b) proceeded to drive in circles around the block approximately a dozen times. Sgt. Marussich considered this behavior to be suspicious because driving in circles is characteristic of the commission of a crime. § 87(2)(b) may have been casing a victim or location, or attempting to make a drug buy or sale. § 87(2)(b) eventually stopped in front of a bodega and Sgt. Marussich observed a male passenger exiting the vehicle. Sgt. Marussich did not observe any physical contact between § 87(2)(b) and his passenger. Sgt. Marussich did not see at which point the passenger entered § 87(2)(b)'s vehicle. Sgt. Marussich and PO Talavera continued following § 87(2)(b)'s vehicle before deciding to stop § 87(2)(b) for his tinted windows and his suspicious driving in a drug-prone location with a known robbery pattern.

The officers exited their RMP and approached § 87(2)(b)'s vehicle. § 87(2)(b) was combative towards PO Talavera, arguing with him about why the officers stopped § 87(2)(b)'s vehicle. Sgt. Marussich believed that PO Talavera felt uncomfortable with § 87(2)(b)'s demeanor, prompting PO Talavera to ask § 87(2)(b) to step out of his vehicle. § 87(2)(b) complied and exited his vehicle and walked to the back, where Sgt. Marussich was waiting. Sgt. Marussich immediately recognized § 87(2)(b) who is a recidivist known to carry firearms. Sgt. Marussich knew this because there are photos of § 87(2)(b) at the 108th Precinct stationhouse. Sgt. Marussich stated that § 87(2)(b) has been arrested by officers from his precinct as well as other commands for gun possession. Sgt. Marussich also observed a bulge protruding from § 87(2)(b)'s waistband area, near his belt. Based on Sgt. Marussich's knowledge that § 87(2)(b) is known to carry a firearm, as well as the bulge, and § 87(2)(b)'s suspicious driving, Sgt. Marussich decided to frisk § 87(2)(b). Sgt. Marussich patted his hands over § 87(2)(b)'s waistband area, around the belt. The pat-down lasted approximately three seconds and was confined to the waistband area. Sgt. Marussich stated that PO Talavera was looking inside § 87(2)(b)'s vehicle from the outside and PO Talavera never physically entered the vehicle. PO Talavera did not open any vehicle

compartments or perform any of the searches that § 87(2)(b) alleged. PO Talavera warned and admonished § 87(2)(b) for his tinted windows and § 87(2)(b) was let go (See Board Review 5).

A search of § 87(2)(b)'s arrest reports confirmed prior arrests for offenses that include burglary, criminal mischief, first-degree robbery with a deadly weapon, criminal use of a firearm, and criminal possession of a loaded gun, among other charges (See Board Review 6).

Patrol Guide Procedure 212-11 states that an officer may frisk a person if the officer reasonably suspects that he or others are in danger of physical injury (See Board Review 7).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

In *The People of the State of New York v. James Carvey* (89 N.Y.2d 707; 680 N.E.2d 150; 657 N.Y.S.2d 879), the New York Court of Appeals held that when there is evidence to conclude that a “weapon located within the vehicle present an actual and specific danger” to officers’ safety, the limited intrusion of reaching into a vehicle where the defendant had been seated is justified even though the defendant was unable to gain immediate access (See Board Review 8).

§ 87(2)(g)
[REDACTED]

Squad: 8

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date